

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
RONALD W. OLIVER,

Appellant,

v.

SOUTHWEST AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 619

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER being an appeal of a \$50.00 civil penalty imposed by the Southwest Air Pollution Control Authority for an alleged violation of its Regulation I, Article IV, Section 4.01; having come on regularly for hearing before William E. Cullen, Jr., hearing examiner, on the 27th day of September, 1974, at Vancouver, Washington; and appellant, Ronald W. Oliver, appearing pro se and respondent, Southwest Air Pollution Control Authority, appearing through its attorney, James D. Ladley; and the Board having read the transcript, examined the exhibits, records and files herein and having entered on the 18th day of November, 1974,

1 its proposed Findings of Fact, Conclusions of Law and Order, and the  
2 Board having served said proposed Findings, Conclusions and Order upon  
3 all parties herein by certified mail, return receipt requested and twenty  
4 days having elapsed from said service; and

5 The Board having received no exceptions to said proposed Findings,  
6 Conclusions and Order; and the Board being fully advised in the premises;  
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
9 Findings of Fact, Conclusions of Law and Order, dated the 18th day of  
10 November, 1974, and incorporated by this reference herein and attached  
11 hereto as Exhibit A, are adopted and hereby entered as the Board's  
12 Final Findings of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington, this 7th day of January, 1975.

14 POLLUTION CONTROL HEARINGS BOARD

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16 Walt Woodward  
WALT WOODWARD, Chairman

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18 W. A. Gissberg  
19 W. A. GISSBERG, Member

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$50.00 civil penalty imposed by the Southwest Air Pollution Control Authority for an alleged violation of its Regulation I, Article IV, Section 4.01, was heard at an informal hearing before William E. Cullen, Jr., hearing examiner, in the council chambers at the City Hall in Vancouver, Washington, on September 27, 1974.

Appellant, Ronald W. Oliver, appeared pro se; respondent, Southwest Air Pollution Control Authority, appeared by its attorney, James D. Ladley.

Thomas C. Tabor, field representative for Southwest Air Pollution Control Authority; Jack Smythe of the Clark County Fire District No. 6,

EXHIBIT A

and Ronald W. Oliver, appellant, were sworn and testified. Respondent's Exhibit 1, consisting of the regulations of the Southwest Air Pollution Control Authority; respondent's Exhibit 2, consisting of a copy of the Notice of Violation, and respondent's Exhibit 3, consisting of a copy of the burning permit, were admitted.

Having reviewed the transcript and examined the exhibits, the Pollution Control Hearings Board makes these

#### FINDINGS OF FACT

##### I.

Appellant is the owner of property at 12201 Northwest 36th Avenue, Vancouver, Clark County, Washington. This area is within the jurisdiction of the Southwest Air Pollution Control Authority.

##### II.

On or about May 8, 1974, at approximately 4:45 p.m., Thomas C. Tabor, having received a complaint concerning a fire at 12201 Northwest 36th Avenue in Vancouver, went to the site where he found the basement of a previous structure with various materials on fire on the floor of the basement. The smoke was gray-white in color with an odor characteristic of burning asphalt or roofing. Present at the site were two firemen not on duty from Fire District No. 6 and appellant.

Mr. Tabor told appellant that it smelled as if some prohibitive material was being burned. Appellant indicated that he thought he had removed all the asphalt material from the basement but that perhaps he had not.

##### III.

A permit had been issued to appellant for burning on April 14, 1974,

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 from Fire District No. 6 but the permit was restricted to natural  
2 vegetation. The fire in question on May 8, 1974, was not completely  
3 natural vegetation.

4 IV.

5 Appellant undertook to burn a great deal of natural vegetation in  
6 the basement remains. Appellant attempted to remove all of the unnatural  
7 material from the basement prior to burning. To the best of appellant's  
8 knowledge there was no asphalt or other building materials in the fire.  
9 However, he has admitted that there had been some roofing material from  
10 a re-roofing job on his house which had been thrown in the basement.  
11 Appellant and others had removed the asphalt roofing from the corner of  
12 the basement where it had been, but there may have been some material  
13 left, according to appellant. He did not intentionally burn any asphalt.

14 V.

15 The position of Clark County Fire District No. 6 is that appellant  
16 had a burning permit for the fire, but that the firemen on duty were  
17 asked to be there by appellant, were volunteers and not on duty for the  
18 fire district. They were there simply to assist appellant. The civil  
19 penalty of \$50.00 was imposed by respondent in this case, notice of  
20 which penalty was received by the appellant.

21 VI.

22 The burning permit issued to Ronald W. Oliver is limited to natural  
23 vegetation only.

24 VII.

25 Section 4.01 of Regulation I of the Southwest Air Pollution Control  
26 Authority, permits open burning pursuant to a burning permit but

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 prohibits the burning of any material containing asphalt.

2 VIII.

3 Any Conclusion of Law hereinafter recited which should be deemed a  
4 Finding of Fact is hereby adopted as such.

5 From these Findings, the Pollution Control Hearings Board comes  
6 to these

7 CONCLUSIONS OF LAW

8 I.

9 The obligation to abide by the regulations of the Southwest Air  
10 Pollution Control Authority regarding burning is that of the appellant.

11 II.

12 Appellant burned or permitted to be burned asphalt roofing material  
13 in a fire for which he had an otherwise valid burning permit.

14 III.

15 The burning of the asphalt was entirely unintentional on the part  
16 of appellant, the fire having been primarily started for the burning of  
17 natural vegetation according to permit.

18 IV.

19 The penalty assessed for burning this fire is reasonable, but should  
20 be suspended because any burning of the asphalt was entirely without  
21 appellant's intention.

22 V.

23 Any Finding of Fact which should be deemed a Conclusion of Law is  
24 hereby adopted as such.

25 Accordingly, it is the Board's

26 FINDINGS OF FACT,

27 CONCLUSIONS OF LAW AND ORDER

ORDER

That the appeal be denied, but the \$50.00 penalty is suspended pending no further violation for a period of one year from the date this Order becomes final.

DONE at Lacey, Washington this 18<sup>th</sup> day of November, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward  
WALT WOODWARD, Chairman

W. A. Gissberg  
W. A. GISSBERG, Member

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER